

**In re: RAFAEL DOMINGUEZ, d/b/a LA BODEGA WHOLESALE
FOODS & LATINA AMERICAN GROCERY.
P.Q. Docket No. 00-0017.
Decision and Order filed February 26, 2001.**

**Default – Failure to file timely answer – Avocados – Ability to pay – Statutes at large
constructive notice – Federal Register constructive notice – Civil penalty – Sanction policy.**

The Judicial Officer affirmed the Default Decision issued by Chief Administrative Law Judge James W. Hunt (Chief ALJ): (1) concluding that the Respondent moved 6 boxes of Mexican Hass avocados from Illinois to Missouri in violation of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff; and (2) assessing the Respondent a \$6,000 civil penalty. The Judicial Officer rejected the Respondent's contention that his lack of knowledge of the Plant Quarantine Act and the Federal Plant Pest Act should affect the disposition of the proceeding. The Judicial Officer stated the Plant Quarantine Act and the Federal Plant Pest Act are published in the statutes at large and the United States Code and the Respondent is presumed to know the law. The Judicial Officer also stated the regulations prohibiting the movement of Mexican Hass avocados from Illinois to Missouri are published in the *Federal Register*; thereby constructively notifying the Respondent of the prohibition on the movement of Mexican Hass avocados from Illinois to Missouri. The Judicial Officer held that the Respondent's intention to close his business and start a new business are neither defenses to his violations of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff nor mitigating circumstances to be taken into account when determining the amount of the civil penalty to assess against the Respondent. The Judicial Officer also held that the Respondent failed to prove, by producing documents, that he was not able to pay the \$6,000 civil penalty.

James D. Holt, for Complainant.

Respondent, Pro se.

Initial decision issued by James W. Hunt, Chief Administrative Law Judge.

Decision and Order issued by William G. Jenson, Judicial Officer.

Procedural History

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on August 15, 2000. Complainant instituted this proceeding under the Act of August 20, 1912, as amended (7 U.S.C. §§ 151-154, 156-164a, 167) [hereinafter the Plant Quarantine Act]; the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj) [hereinafter the Federal Plant Pest Act]; regulations issued under the Plant Quarantine Act and the Federal Plant Pest Act (7 C.F.R. §§ 301.11(b)(2) and 319.56-2ff); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].¹

¹ Section 438(a) of the Plant Protection Act, enacted June 20, 2000, repealed the Plant Quarantine Act and the Federal Plant Pest Act. However, section 438(c) of the Plant Protection Act states

Complainant alleges that: (1) on or about November 24, 1999, Rafael Dominguez, d/b/a La Bodega Wholesale Foods & Latina American Grocery [hereinafter Respondent], moved one box of Mexican Hass avocados from Chicago, Illinois, to La Bodega Wholesale Foods, St. Louis, Missouri, in violation of 7 C.F.R. §§ 301.11(b)(2) and 319.56-2ff; (2) on or about November 29, 1999, Respondent moved two boxes of Mexican Hass avocados from Chicago, Illinois, to Cancun Restaurant, Arnold, Missouri, in violation of 7 C.F.R. §§ 301.11(b)(2) and 319.56-2ff; (3) on or about November 30, 1999, Respondent moved two boxes of Mexican Hass avocados from Chicago, Illinois, to La Mexicana Grocery, St. Anns, Missouri, in violation of 7 C.F.R. §§ 301.11(b)(2) and 319.56-2ff; and (4) on or about December 7, 1999, Respondent moved one box of Mexican Hass avocados from Chicago, Illinois, to Latina American Grocery, St. Louis, Missouri, in violation of 7 C.F.R. §§ 301.11(b)(2) and 319.56-2ff (Compl. ¶¶ II-V).

The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and a service letter on August 21, 2000.² Respondent failed to file an answer to the Complaint within 20 days after service of the Complaint, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). The Hearing Clerk sent Respondent a letter, dated October 12, 2000, stating that an answer to the Complaint had not been filed within the allotted time.

On October 19, 2000, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Adoption of Proposed Decision and Order. The Hearing Clerk served Respondent with Complainant's Motion for Adoption of Proposed Decision and Order and a service letter on October 27, 2000.³ Respondent failed to file objections to Complainant's Motion for Adoption of Proposed Decision and Order within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The Hearing Clerk sent Respondent a letter, dated November 22, 2000, stating that objections to Complainant's Motion for Adoption of Proposed Decision and Order had not been filed within the allotted time and that the record was being referred to an administrative law judge for consideration and decision.

On December 1, 2000, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Chief Administrative Law Judge James W. Hunt [hereinafter

"[r]egulations issued under the authority of a provision of law repealed by subsection (a) shall remain in effect until such time as the Secretary [of Agriculture] issues a regulation under section 434 that supercedes the earlier regulation."

² See Domestic Return Receipt for Article Number P368330859.

³ See Domestic Return Receipt for Article Number P368327605.

the Chief ALJ] issued a Decision and Order [hereinafter Initial Decision and Order]: (1) finding that on November 24, 1999, Respondent moved one box of Mexican Hass avocados from Chicago, Illinois, to La Bodega Wholesale Foods, St. Louis, Missouri; (2) finding that on November 29, 1999, Respondent moved two boxes of Mexican Hass avocados from Chicago, Illinois, to Cancun Restaurant, Arnold, Missouri; (3) finding that on November 30, 1999, Respondent moved two boxes of Mexican Hass avocados from Chicago, Illinois, to La Mexicana Grocery, St. Anns, Missouri; (4) finding that on December 7, 1999, Respondent moved one box of Mexican Hass avocados from Chicago, Illinois, to Latina American Grocery, St. Louis, Missouri; (5) concluding that Respondent violated the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff; and (6) assessing Respondent a \$6,000 civil penalty (Initial Decision and Order at 3, 5).

On January 4, 2001, Respondent appealed to the Judicial Officer. On February 20, 2001, Complainant filed Complainant's Response to Respondent's Appeal. On February 22, 2001, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I agree with the Chief ALJ's Initial Decision and Order. Therefore, pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)), I adopt the Initial Decision and Order as the final Decision and Order with minor modifications. Additional conclusions by the Judicial Officer follow the Chief ALJ's discussion, as restated.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

....

CHAPTER 7B—PLANT PESTS

....

§ 150gg. Violations

....

(b) Civil penalty

Any person who—

- (1) violates section 150bb of this title or any regulation

promulgated under this chapter[]

. . . .

may be assessed a civil penalty by the Secretary not exceeding \$1,000. The Secretary may issue an order assessing such civil penalty only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable under chapter 158 of title 28. The validity of such order may not be reviewed in an action to collect such civil penalty.

. . . .

CHAPTER 8—NURSERY STOCK AND OTHER PLANTS AND PLANT PRODUCTS

. . . .

§ 163. Violations; forgery, alterations, etc., of certificates; punishment; civil penalty

. . . Any person who violates any . . . rule[] or regulation [promulgated by the Secretary of Agriculture under this chapter] . . . may be assessed a civil penalty by the Secretary not exceeding \$1,000. The Secretary may issue an order assessing such civil penalty only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable under chapter 158 of title 28. The validity of such order may not be reviewed in an action to collect such civil penalty.

7 U.S.C. §§ 150gg(b), 163.
7 C.F.R.:

TITLE 7—AGRICULTURE

. . . .

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

. . . .

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

. . . .

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Imported Plants and Plant Parts

....

§ 301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.

(a) In accordance with part 319 of this chapter, some plants and plant parts may only be imported into the United States subject to certain destination restrictions. That is, under part 319, some plants and plant parts may be imported into some States or areas of the United States but are prohibited from being imported into, entered into, or distributed within other States or areas, as an additional safeguard against the introduction and establishment of foreign plant pests and diseases.

(b) Under this quarantine notice, whenever any imported plant or plant part is subject to destination restrictions under part 319:

....

(2) No person shall move any plant or plant part from any such quarantined State or area into or through any State or area not quarantined with respect to that plant or plant part.

....

PART 319—FOREIGN QUARANTINE NOTICES

....

Subpart—Fruits and Vegetables

Quarantine

....

§ 319.56-2ff Administrative instructions governing movement of Hass avocados from Mexico to the Northeastern United States.

Fresh Hass variety avocados (*Persea americana*) may be imported from Mexico into the United States for distribution in the northeastern United States only under a permit issued in accordance with § 319.56-4, and only under the following conditions:

(a) *Shipping restrictions.* . . .

....

(3) The avocados may be distributed only in the following

northeastern States: Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

....
(c) *Safeguards in Mexico.* . . .

....
(3) *Packinghouse requirements.* The packinghouse must be registered with Sanidad Vegetal's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by Sanidad Vegetal. The operations of the packinghouse must meet the following conditions:

....
(vii) The avocados must be packed in clean, new boxes. The boxes must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement "Distribution limited to the following States: CT, DC, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and WI."

7 C.F.R. §§ 301.11(a), (b)(2), 319.56-2ff(a)(3), (c)(3)(vii).

**CHIEF ADMINISTRATIVE LAW JUDGE'S
INITIAL DECISION AND ORDER
(AS RESTATED)**

Respondent failed to file an answer within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the material allegations in the Complaint are adopted as Findings of Fact, and this Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent's mailing address is 2730 Cherokee Street, St. Louis, Missouri 63118.
2. On or about November 24, 1999, Respondent moved one box of Mexican Hass avocados from Chicago, Illinois, to La Bodega Wholesale Foods, St. Louis, Missouri.
3. On or about November 29, 1999, Respondent moved two boxes of Mexican Hass avocados from Chicago, Illinois, to Cancun Restaurant, Arnold,

Missouri.

4. On or about November 30, 1999, Respondent moved two boxes of Mexican Hass avocados from Chicago, Illinois, to La Mexicana Grocery, St. Anns, Missouri.

5. On or about December 7, 1999, Respondent moved one box of Mexican Hass avocados from Chicago, Illinois, to Latina American Grocery, St. Louis, Missouri.

Conclusions of Law

By reason of the facts contained in the Findings of Fact, Respondent violated the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff.

Discussion

The movement of each box of Mexican Hass avocados outside the states quarantined for Mexican Hass avocados is a separate violation of the Plant Quarantine Act and the Federal Plant Pest Act. Pursuant to section 10 of the Plant Quarantine Act (7 U.S.C. § 163) the Secretary of Agriculture may assess a civil penalty of \$1,000 for each violation of the Plant Quarantine Act and pursuant to section 108(b) of the Federal Plant Pest Act (7 U.S.C. § 150gg(b)), the Secretary of Agriculture may assess a civil penalty of \$1,000 for each violation of the Federal Plant Pest Act. Therefore, the maximum civil penalty which could be assessed against Respondent is \$6,000.⁴

The United States Department of Agriculture's current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory

⁴ Section 438(a) of the Plant Protection Act, enacted June 20, 2000, repealed the Plant Quarantine Act and the Federal Plant Pest Act. However, 1 U.S.C. § 109 provides that "[t]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability." The Plant Protection Act does not provide that the repeal of the Plant Quarantine Act and the Federal Plant Pest Act releases or extinguishes any penalty, forfeiture, or liability incurred under the Plant Quarantine Act or the Federal Plant Pest Act.

statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The success of the programs designed to protect United States agriculture by the prevention, control, and eradication of plant pests is dependent upon the compliance of businesses, such as Respondent, with laws and regulations designed to prevent the spread of plant pests. A failure to comply with regulations designed to prevent the spread of plant pests greatly increases the risk of the spread of plant pests. The imposition of sanctions in cases, such as this case, is extremely important to the prevention of the spread of plant pests. Sanctions must be sufficiently substantial to deter the violator and other potential violators from future violations of the laws and regulations designed to prevent the spread of plant pests.

Respondent committed six violations of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff. A single violation of the Plant Quarantine Act, the Federal Plant Pest Act, 7 C.F.R. § 301.11(b), or 7 C.F.R. § 319.56-2ff could cause losses of billions of dollars and eradication expenses of tens of millions of dollars. These circumstances suggest the need for a severe sanction to serve as an effective deterrent to future violations.

Complainant believes the assessment of a \$6,000 civil penalty against Respondent will deter Respondent and other potential violators from future violations of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff (Complainant's Motion for Adoption of Proposed Decision and Order at 12). Complainant's recommendation as to the appropriate sanction is entitled to great weight in view of the experience gained by Complainant during Complainant's day-to-day supervision of the regulated industry. Civil penalties imposed by the Secretary of Agriculture for violations of laws designed to prevent the spread of plant pests must be sufficiently large to serve as an effective deterrent not only to the violator, but also to other potential violators. Furthermore, if the violator cannot pay the assessed civil penalty, arrangements can be made to allow the violator to pay the civil penalty over a period of time.⁵

In order to achieve the congressional purpose of the Plant Quarantine Act and the Federal Plant Pest Act and to prevent the spread of plant pests, violators are held responsible for any violation irrespective of their lack of evil motive or intent to violate the Plant Quarantine Act and the Federal Plant Pest Act.⁶

⁵ *In re Shulamis Kaplinsky*, 47 Agric. Dec. 613, 633 (1988).

⁶ *In re Cynthia Twum Boafo*, 60 Agric. Dec. ___, slip op. at 8 (Feb. 21, 2001); *In re Mercedes*

I find the assessment of a \$6,000 civil penalty against Respondent for his violations of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff warranted in law, justified by the facts, and consistent with the United States Department of Agriculture's sanction policy.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent raises three issues in Respondent's December 29, 2000, letter to the United States Department of Agriculture [hereinafter Appeal Petition]. First, Respondent contends he was not aware of the Plant Quarantine Act or the Federal Plant Pest Act (Appeal Pet.).

The Plant Quarantine Act and the Federal Plant Pest Act are published in the statutes at large and the United States Code, and Respondent is presumed to know the law.⁷ Moreover, the regulations prohibiting the movement of Mexican Hass avocados from Illinois to Missouri are published in the *Federal Register*; thereby constructively notifying Respondent of the prohibition on the movement of Mexican Hass avocados from Illinois to Missouri.⁸ Therefore, Respondent's lack of actual knowledge of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff is not a defense to Respondent's violations of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff.

Second, Respondent states that he will close his business and start a new business (Appeal Pet.).

Respondent's intention to close his business and start a new business are not defenses to the violations of the Plant Quarantine Act, the Federal Plant Pest

Capistrano, 45 Agric. Dec. 2196, 2198 (1986); *In re Rene Vallalta*, 45 Agric. Dec. 1421, 1423 (1986).

⁷ See *Atkins v. Parker*, 472 U.S. 115, 130 (1985); *North Laramie Land Co. v. Hoffman*, 268 U.S. 276, 283 (1925); *Johnston v. Iowa Dep't of Human Servs.*, 932 F.2d 1247, 1249-50 (8th Cir. 1991).

⁸ See *FCIC v. Merrill*, 332 U.S. 380, 385 (1947); *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 71 (2d Cir. 1994); *United States v. Wilhoit*, 920 F.2d 9, 10 (9th Cir. 1990); *Jordan v. Director, Office of Workers' Compensation Programs*, 892 F.2d 482, 487 (6th Cir. 1989); *Kentucky ex rel. Cabinet for Human Resources v. Brock*, 845 F.2d 117, 122 n.4 (6th Cir. 1988); *Government of Guam v. United States*, 744 F.2d 699, 701 (9th Cir. 1984); *Bennett v. Director, Office of Workers' Compensation Programs*, 717 F.2d 1167, 1169 (7th Cir. 1983); *Diamond Ring Ranch, Inc. v. Morton*, 531 F.2d 1397, 1405 (10th Cir. 1976); *Wolfson v. United States*, 492 F.2d 1386, 1392 (Ct. Cl. 1974) (per curiam); *United States v. Tijerina*, 407 F.2d 349, 354 n.12 (10th Cir.), cert. denied, 396 U.S. 867, and cert. denied, 396 U.S. 843 (1969); *Ferry v. Udall*, 336 F.2d 706, 710 (9th Cir. 1964), cert. denied, 381 U.S. 904 (1965).

Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff.⁹ Moreover, Respondent's intention to close his business and start a new business are not mitigating circumstances to be taken into account when determining the amount of the civil penalty to assess against Respondent for his violations of the Plant Quarantine Act, the Federal Plant Pest Act, and 7 C.F.R. §§ 301.11(b) and 319.56-2ff.

Third, Respondent contends that he is not able to pay a \$6,000 civil penalty (Appeal Pet.).

A violator's inability to pay a civil penalty is a mitigating circumstance to be considered for the purpose of determining the amount of the civil penalty to be assessed in animal quarantine cases and plant quarantine cases.¹⁰ However, the burden is on the respondents in animal quarantine cases and plant quarantine cases to prove, by producing documentation, the lack of ability to pay the civil penalty.¹¹ Respondent has failed to produce any documentation supporting his assertion that he lacks the ability to pay a \$6,000 civil penalty, and Respondent's undocumented assertion that he lacks the ability to pay the civil penalty falls far short of the proof necessary to establish an inability to pay the civil penalty.¹² Nonetheless, in view

⁹ Cf. *In re Mary Meyers*, 56 Agric. Dec. 322, 348 (1997) (stating neither the respondent's disposal of all of her animals under the Secretary of Agriculture's jurisdiction under the Animal Welfare Act, as amended, nor the respondent's intention to "give up" her Animal Welfare Act license is a defense to the respondent's violations of the Animal Welfare Act, as amended, or the regulations and standards issued under the Animal Welfare Act, as amended); *In re Dora Hampton*, 56 Agric. Dec. 301, 320 (1997) (stating the respondent's intention to dispose of all animals in her possession under the jurisdiction of the Secretary of Agriculture under the Animal Welfare Act, as amended, is not a defense to the respondent's violations of the Animal Welfare Act, as amended, or the regulations and standards issued under the Animal Welfare Act, as amended).

¹⁰ *In re Cynthia Twum Bofo*, 60 Agric. Dec. ___, slip op. at 12 (Feb. 21, 2001); *In re Jerry Lynn Stokes*, 57 Agric. Dec. 914, 919 (1998); *In re Garland E. Samuel*, 57 Agric. Dec. 905, 912-13 (1998); *In re Barry Glick*, 55 Agric. Dec. 275, 283 (1996); *In re Robert L. Heywood*, 52 Agric. Dec. 1323, 1324-25 (1993); *In re Robert L. Heywood*, 52 Agric. Dec. 1315, 1321-22 (1993) (Decision and Order and Remand Order).

¹¹ *In re Cynthia Twum Bofo*, 60 Agric. Dec. ___, slip op. at 12 (Feb. 21, 2001); *In re Jerry Lynn Stokes*, 57 Agric. Dec. 914, 919 (1998); *In re Garland E. Samuel*, 57 Agric. Dec. 905, 913 (1998); *In re Barry Glick*, 55 Agric. Dec. 275, 283 (1996); *In re Robert L. Heywood*, 52 Agric. Dec. 1323, 1324-25 (1993); *In re Robert L. Heywood*, 52 Agric. Dec. 1315, 1321-22 (1993) (Decision and Order and Remand Order).

¹² See *In re Cynthia Twum Bofo*, 60 Agric. Dec. ___, slip op. at 12 (Feb. 21, 2001) (holding that undocumented assertions by the respondent that she was unable to pay the civil penalty falls far short of the proof necessary to establish inability to pay); *In re Jerry Lynn Stokes*, 57 Agric. Dec. 914, 919-20 (1998) (holding that undocumented assertions by the respondent that he was unable to pay the civil penalty falls far short of the proof necessary to establish inability to pay); *In re Garland E. Samuel*, 57 Agric. Dec. 905, 913 (1998) (holding that undocumented assertions by the respondent

of Respondent's assertion regarding his inability to pay a \$6,000 civil penalty, I am providing for payment of the civil penalty over a period of time.

For the foregoing reasons, the following Order should be issued.

Order

Respondent is assessed a \$6,000 civil penalty. The civil penalty shall be paid by certified checks or money orders, made payable to the Treasurer of the United States, and sent to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall make payments of \$500 each month for 12 consecutive months. Respondent's initial payment of \$500 shall be sent to, and received by, the United States Department of Agriculture, APHIS Field Servicing Office, Accounting Section, within 60 days after service of this Order on Respondent. If Respondent is late in making any payment or misses any payment, then all remaining payments become immediately due and payable in full. Respondent shall state on each certified check or money order that payment is in reference to P.Q. Docket No. 00-0017.

that he was unable to pay the civil penalty falls far short of the proof necessary to establish inability to pay); *In re Barry Glick*, 55 Agric. Dec. 275, 283 (1996) (holding that undocumented assertions by the respondent that he lacked the assets to pay the civil penalty are not sufficient to prove inability to pay the civil penalty); *In re Don Tollefson*, 54 Agric. Dec. 437, 439 (1995) (assessing the full civil penalty despite the respondent's submission of some documentation of financial problems) (Order Denying Pet. for Recons.); *In re Robert L. Heywood*, 52 Agric. Dec. 1323, 1325 (1993) (assessing the full civil penalty because the respondent did not produce documentation establishing his inability to pay the civil penalty).